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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,252	11/04/2003	Philip R. Kwok	4398-303	3755
23117	7590	09/21/2005	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TAL

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/700,252	KWOK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nihir Patel	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on July 13<sup>th</sup>, 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims **17 through 29** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims **1 through 13** of U.S. Patent No. **6,532,961**. Although the conflicting claims are not identical, they are not patentably distinct from each other because **claim 17 of the instant application** is broader than patented claim 1 of patent '961, therefore, patented claim 1 "anticipates" instant application claim 17. In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). **With respect to claim 18 of the instant application**, the limitations can be found in claims 2 of patent '961. **With respect to claim 19 of the instant application**, is broader than patented claim 3 of patent '961, therefore, patented claim 3 "anticipates" instant application claim 19. In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). **With respect to claim 20 of the instant application**, the limitations can be found in claim 4 of patent '961. **With respect to claim 21 of the instant application**, the limitations can be found in claim 5 of patent '961. **With respect to claim 22 of the instant application**, the limitations can be found in claim 6 of patent '961. **With respect to**

**claim 23 of the instant application**, the limitations can be found in claim 7 of patent '961. **With respect to claim 24 of the instant application**, the limitations can be found in claim 8 of patent '961. **With respect to claim 25 of the instant application**, the limitations can be found in claim 9 of patent '561. **With respect to claim 26 of the instant application**, the limitations can be found in claim 10 of patent '961. **With respect to claim 27 of the instant application**, the limitations can be found in claim 11 of patent '961. **With respect to claim 28 of the instant application**, the limitations can be found in claim 12 of patent '961. **With respect to claim 29 of the instant application**, is broader than patented claim 13 of patent '961, therefore, patented claim 13 "anticipates" instant application claim 29. In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Claims **17, 19, 20 and 23 through 29** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims **1 4-6, 19, 21 and 27** of U.S. Patent No. **6,860,269**. Although the conflicting claims are not identical, they are not patentably distinct from each other because **claims 17, 19, 25, 26 and 27 of the instant application** are broader than patented claim 1 of patent '269 therefore, patented claim 1 "anticipates" instant application claims 17, 19, 25, 26 and 27, In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). **With respect to claim 28 of the instant application**, the limitations can be found in claim 4 of patent '269. **With respect to claims 17 and 20 of the instant application**, are broader than patented claims 5 and 6 of patent '269 therefore, patented claim 5 and 6 "anticipates" instant application claims 17 and 20 In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). **With respect to claim 17 of the instant application**, is broader than patented claim 19 of patent '269, therefore, patented claim 19 "anticipates" instant

application claim 17, In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). **With respect to claim 23 of the instant application**, the limitations can be found in claim 21 of patent '269. **With respect to claims 17 and 24 of the instant application**, are broader than patented claim 27 of patent '269, therefore, patented claim 27 'anticipates' instant application claims 17 and 24, In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

***Claim Rejections - 35 USC § 112***

Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claimed subject matter "cantilevered member structured to be fixed at a first end of to the T-bar, the cantilever member being adapted to flex between a first and second angular position" was not described in the specification.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
September 19<sup>th</sup>, 2005

Henry Bennett  
Supervisor Patent Examiner  
Group 3700